IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 901 of 1999

with

CIVIL REVISION APPLICATION No. 902 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT ELECTRICITY BOARD

Versus

DINESH RAGHUNATH GAKHER

Appearance:
MR NK MAJMUDAR for petitioners
MR SURESH M SHAH for respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 18/07/2000

C.A.V.JUDGEMENT

1. These two Civil Revision Applications arise from the same suit though against two different orders passed by the Trial Court. I therefore thought it fit to

dispose of both these applications by this common order.

2. The plaintiff-respondent filed Special Suit No. 29/99 in the Court of Civil Judge (S.D.) at Gandhidham. The suit is filed for declaration and injunction. The declaration sought by the plaintiff-respondent to the extent that the defendants-petitioners have no right to disconnect the electricity connection of the plaintiff-respondent without giving notice to the consumer. Further declaration is prayed to the effect that the defendants-petitioners are bound to reconnect/restore the electricity connection of the plaintiff-respondent.

3. The plaintiff-respondent is running Hotel City Plaza in the City of Gandhidham. The respondent-plaintiff claims himself to be a partner in the Hotel. The electricity connection which is given by the Board to the Hotel bears Consumer No. 38103/05709/6.

4. On 11.1.1999, the officers of the Gujarat Electricity Board visited the Hotel and during the course of the inspection they detected a case of theft of electricity and accordingly a supplementary bill was prepared and served upon the plaintiff-respondent. In the laboratory of the Gujarat Electricity Board on checking it is found that in meter there was a big hole on a top cover and it is opined that it was a case of tempering with the meter and a case of theft of electricity energy. The supplementary bill is dated 7.5.1999 for a sum of Rs. 10,52,646.41 ps.

5. The amount of this bill was not paid by the respondent-plaintiff and Board has disconnected the electricity connection of plaintiff-respondent. The suit has been filed by the plaintiff-respondent on 11.5.1999 In paragraph-5 of the plaint, the plaintiff-respondent admitted that the board has issued supplementary bill on 7.5.1999 for Rs. 10,52,646.41 ps. In paragraph -18 of the plaint the plaintiff-respondent prayed for grant of following relief;

A. To declare that the defendants have no right, power to disconnect the said connection without serving notice to the plaintiff.

B. To declare that the defendants are bound and are under legal obligation to restore the said electric connection.

C. To grant permanent injunction ordering the defendants to restore the electric connection of the plaintiff bearing consumer no. 38103/05709/6.

D. To pass any order which the Hon'ble Court may deem fit and proper.

6. Along with the suit, the plaintiff-respondent filed an application for grant of temporary injunction and therein the following prayers have been made.

A. That the defendants be order to restore the said connection of plaintiff bearing consumer no. 38103/05709/6 till the final disposal of the suit.

B. To grant ex-parte ad-interim injunction in terms of para no. 19(a) of above.

C. To grant any other relief which the Hon'ble Court made deem fit and proper.

7. In the suit the prayer is not made by the respondent-plaintiff for quashing and setting aside of the supplementary bill. The plaintiff-respondent has also by that time not filed an appeal to the Appellate Authority as provided by Condition No.34 of the Conditions and Miscellaneous Charges for supply of electricity energy.

8. In paragraph no.16 of the plaint the plaintiff-respondent has averred that the disputed bill is about Rs. 50,000/- and as such the Trial Court has peculiar jurisdiction to try and entertain the suit. It is further stated that the suit is filed only for declaration and permanent injunction and the plaintiff-respondent challenges the act of the defendants-petitioners. As such for the purpose of court fees, the suit is valued at Rs. 500 and the Court fees Rs. 50/- is paid on the plaint. To recapitulate the suit is valued, (i) for pecuniary jurisdiction : Rs.50,000/- and (ii) for Court fees : Rs.500/-.

9. On 30th May,1999, the plaintiff-respondent filed an application in the suit and therein the prayer is made that the plaintiff-respondent's meters be referred to Electrical Inspector, Mahesana for checking.

10. On 14th May, 1999, the learned Trial Court decided both the application at Exh.5 and the application for sending of the meter to the Electrical Inspector, Mahesana for checking. The order passed on Exh.5 reads

as under :

1. The plaintiff shall filed an appeal for disputed bill mark 4/13 dated 7/5/99 for Rs. 10,52,646.41 before appellate authority of Gujarat Electricity Board in context of para no.13 of suit application within 15 days from today.

2. The plaintiff shall pay an amount of 30% at present in context of disputed bill in three installments by instalment of 10 % monthly each to defendant (Note :- Instalment considering judgment of CMA no.152/93 mark 14/1 of District and Session Judge, Kuttch Bhuj in context of order of Exh.5 are made considering very much submission of Ld. Advocate Shri Alvani for plaintiff).

3. Immediately on payment of first 10% amount by plaintiff to defendant the defendant shall reconnect electricity connection of plaintiff by taking charge of new electricity connection (within three days only).

4. The order of Exh.15 and report or opinion of Electrical Inspector will be binding upon both parties and appellate authority, defendant.

5. If the plaintiff will fail to deposit an amount of 30% of bill in three installments then defendant can against disconnect that electricity connection and no notice will be required to be issued.

6. The electricity connection of plaintiff shall not be disconnected by defendant relating to this disputed bill till decision of appellate authority - Gujarat Electricity Board is taken such order passed below this application. The appellate authority will have to serve order in the manner that both parties are informed about his order.

7. The parties shall bear cost of this application with result of suit.

Pronounced this today on dated 14th May,1999 in open Court.

11. The order on the application for referring meter to the Electrical Inspector, Mahesana for checking reads

as under :

> "Plaintiff in connection to application of Mark 4/11 dated 18/1/1999 wants to send disputed Meter for test to Electrical Inspector, Mahesana for that necessary fee should be paid within 3 days for testing and defendant should accept that fee and it is hereby ordered that within 7 days this Meter should be send to Electrical Inspector, Mahesana as per Section 26(6) of Indian Electricity Act.

12. The defendants-petitioners challenge both these orders by filing these two separate Revision Applications.

13. It is not in dispute that these revision applications were filed by the defendants-petitioners in the Court on 21st May, 1999. The matters were placed for preliminary hearing in the Court on 25th February,1999 and notice was issued to the respondent-plaintiff.

14. On 4th February, 2000 these revision applications have been admitted and set for final hearing.

15. Shri S.M.Shah learned counsel for the plaintiff-respondent raised a preliminary objection re: maintainability of the Revision Application no. 901/1999. It is contended that the impugned order is made by the Trial Court under order 39 Rules 1 & 2 of Civil Procedure Code, 1908 and this order is appealable under Order 43 Rule 1(r) of the Civil Procedure Code, thus this revision application is not maintainable. In support of his contention Shri Shah read out Section 115 of the Civil Procedure Code, 1908. It has next been contended that direction given by the Trial Court has already been complied with and hence this Civil Revision Application has become infructuous. It is further contended that the plaintiff respondent has already preferred an appeal before the Appellate Authority and same is pending. Lastly it is contended that 30% of amount of supplementary bill has already been paid by the plaintiff-respondent to the Board and now nothing survives in this civil revision application.

16. Shri N.K.Majmudar learned counsel for the defendants-petitioners contended that the order passed by the Court below is not under Order 39 Rules 1 & 2 of Civil Procedure Code, 1908 but at the best an order under

Sec.151 of Civil Procedure Code. In his submission mentioning of the provision of law on the application is not conclusive and final. Learned counsel for the defendants-petitioners submits that on the application Exh.5, the plaintiff-respondent mentioned " an application under Section 39 Rules 1 & 2 read with Sec. 151 of the Civil Procedure Code" and it cannot be taken to be an application only order 39 Rules 1& 2 of Civil Procedure Code, 1908. Shri N.K.Majmudar learned counsel urges that the trail Court has also not said that the order is made under Order 39 Rule 1 & 2 of the Civil Procedure Code, 1908. Shri N.K.Majmudar submits that if we go by the order passed by the trial Court, it is an order not passed under Order 39 Rule 1 & 2 of the Civil Procedure Code, 1908 but an order made under Section 151 of the Civil Procedure Code, 1908.

17. Replying to other preliminary objections raised regarding maintainability of this revision application Shri N.K.Majmudar contends that this Court has not stayed the order of the Trial Court, hence it has to be complied with by the Board. The filing of the appeal before the Appellate Authority and depositing of the amount of 30% of supplementary bill is of no consequence.

18. On merits, the learned counsel for the defendants-petitioner submits that the learned Trial Court has granted relief to the plaintiff-respondent under the impugned order, though prayer for the same was not made by the plaintiff in the suit or in the application Exh.5. Relying on the decision of Division Bench of this Court in the case of Kiran Industries v. Gujarat Electricity Board, Vadodara rendered in 1995 (2) GLR 1158, Shri N.K.Majmudar learned counsel for the defendants-petitioners contended that the Trail Court has no jurisdiction to grant any interim relief in favour of the plaintiff-respondent in this case. Shri Majmudar, in the alternate submits that against the order of the trial court, appeal lie to the District Court and that remedy was not availed of, and not to this court and this revision application is not barred in this Court. In support of his this contention, reliance has been placed by the learned counsel for the petitioner on the decision of the Apex court in the case of Smt. Vidhyavati vs. Sridevi Das reported in AIR 1977 SC 397. It has next been contended that the Trial Court has made out a case for the plaintiff-respondent which otherwise he has not prayed for. Carrying this contention further Shri N.K.Majmudar submits that the Trial Court has exceeded its jurisdiction in giving direction to the plaintiff-respondent to file an appeal before the

Appellate Authority and further granted indulgence in the matter to the extent to order for the reconnection of the electricity connection on payment of the 30% of amount of the supplementary bill in three monthly installments of 10% thereof. In his submission, the plaintiff-respondent has not challenged the supplementary bill. The suit has also not been framed to challenge the supplementary bill. The valuation of the supplementary bill was Rs. 10,52,646.41 ps. and the suit was not valued accordingly nor the proper court fees is paid. The suit stated to be for declaration and injunction but otherwise it is a case where the plaintiffs challenging this supplementary bill which admittedly has been received by the plaintiff respondent is not maintainable. Shri Majmudar learned counsel for the defendants-petitioners urges that it is clearly a case of abusing the process of the Court by the plaintiff-respondent. The suit which would have been otherwise of a valuation of Rs. 10,52,646.41. ps. it has made a simple suit of the valuation of Rs.50,000/ for pecuniary jurisdiction and for court fees only of Rs.500/- which clearly exhibits how Court fees is evaded. It is fraud with the Court.

19. Learned counsel for the defendants-petitioners contended that without challenging the supplementary bill the relief of the nature as granted by the Trial Court could not have been granted. The Trial Court has not considered the ratio of the Division Bench of this Court in the case of Kiran Industries Vs. G.E.B. (supra) and in fact this order passed contrary to the decision aforesaid, is without jurisdiction. Lastly, Shri Majmudar submits that the Trial Court has proceed in the matter as if it is sitting there to protect the consumers who committed theft of the electricity energy. In his submission the Trial Court has acted as if it is doing advisory work also and a mandamus has been issued to the plaintiff-respondent to file an appeal.

20. Shri S.M. Shah, learned counsel for the plaintiff-respondent on merits submits that it is the suit against the act of the defendants-petitioners to disconnect the electricity connection of the plaintiff-respondent without notice and accordingly the suit has been filed for declaration and injunction and it is valued appropriately and paid the courts fee thereof. Shri Shah further submits that challenge to the supplementary bill was not necessary. How the suit to be framed, valued and court fees is to be paid is a matter concern of the plaintiff. Otherwise also, Shri Shah submits that all these points have not been raised in the trial court. Relying on the Division Bench decision of

this Court in the case of Kiran Industries vs. G.E.B. (supra), Shri Shah urges that the suit is maintainable. However, Shri Shah is unable to justify successfully the order passed by the trial court to grant interim relief.

21. Challenging the order passed by the trial court on application of the plaintiff-respondent for sending meter for checking to the Electricity Inspector, Shri N.K. Majmudar, learned counsel for the defendants-petitioners submits that this order is wholly without jurisdiction. It is not a case of any difference or dispute as to the correctness of the meters of the plaintiff-respondent. This case, Shri Majmudar, contends does not fall under subsection (6) of section 26 of the Indian Electricity Act, 1910. Carrying this contention further, Shri Majmudar, submits that it is a clear case of malpractice or theft of electricity which is certainly not within the purview of Electrical Inspector and it can be taken care of either by the appellate authority in the appeal as provided in Condition No.34 or by the Civil Court. The order of the court below to send the meters for checking to the Electrical Inspector, in his submission, is wholly without jurisdiction. In support of his contention, Shri Majmudar placed reliance on the decision of the Apex Court in the case of M.P.E.B. vs. Smt. Basantibai reported in AIR 1988 SC 71. It has next been contended that the trial court has no jurisdiction to grant the relief which is otherwise not prayed for in the suit. Referring to the plaint, learned counsel for the defendant-petitioner submits that in the plaint, no such prayer has been made and the trial court has exceeded its jurisdiction in granting the relief by way of interim relief, which relief is not prayed for in the main suit.

22. Replying to the contention raised by the learned counsel for the defendants-respondent Shri S.M. Shah, learned counsel for the plaintiff-respondent submits that in appropriate case, the trial court has jurisdiction to pass the order for sending of the meters for checking to the Electrical Inspector where it is satisfied that it is a case of difference or dispute as to the correctness of the meter.

23. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

24. In para-16 of the plaint, the plaintiff-respondent stated that the disputed bill is of about Rs.50,000/=. This figure has been given out so as to bring the suit within the pecuniary jurisdiction of

the court concerned. In some paras, it is averred that the suit is filed only for declaration and permanent injunction and the plaintiff has challenged the act of the defendant, as such for the purpose of court fees the suit is valued of Rs.500/- and court fees stamp of Rs.50/- is paid on the plaint. In the plaint, the plaintiff-respondent nowhere made any prayer for quashing and setting aside of the supplementary bill. Reference here may have to the pleadings made by the plaintiff-respondent in para-5 of the plaint. In this para, the plaintiff-respondent has admitted as a fact that the defendant-petitioners have considered it to be a case of theft of electricity by the plaintiff-respondent and raised a supplementary bill dated 7-5-1999 for Rs.10,52,642-51/=. Zerox copy of this bill has been submitted along with the plaint. From these admitted pleadings of the plaintiff-respondent, it no more remains in doubt that the supplementary bill was served upon the plaintiff-respondent before the date on which the suit has been filed by him in the court. The plaintiff-respondent was also known of the fact that the supplementary bill has been raised on detection of theft of electricity by the defendants-petitioners. In para-10 of the plaint, the plaintiff-respondent made a reference to Condition No.34 of Conditions and Miscellaneous Charges of Supply of Electrical Energy and averred that the defendants-petitioners are under a legal obligation to restore the electric connection of the plaintiff-respondent after collecting an amount of 30% of the disputed bill. A right of appeal is provided to the consumer under Condition No.34 aforesaid only in case of malpractice or theft of electricity etc.. From the averments made in para-10 of the plaint it is though stated without prejudice and making no admission, the plaintiff-respondent has taken it to be a case where he has a right of appeal on payment of 30% of the amount of supplementary bill raised, and the defendants may be under obligation to restore the connection. In this case, I find sufficient merits in the contention of Shri Majmudar, learned counsel for the defendants-petitioners that the plaintiff-respondent has made an attempt to abuse the process of the court. The filing of simple suit for declaration and injunction in a case where admittedly supplementary bill has been raised for Rs.10 lacs and odd is clearly an attempt to abuse the process of the court by the plaintiff-respondent. This suit, without making a prayer for quashing and setting aside of this bill, is otherwise not maintainable. Consequential relief has to be prayed for and simple declaration, in the facts of this case was not the proper relief and more so, which could have been granted in the facts of this

case by the trial court. It is a deliberate attempt on the part of the plaintiff-respondent to evade the court fees. The suit has been purposely valued at Rs.500/- Not only this, the plaintiff-respondent has tried to misled the court. It is a case where though supplementary bill was of Rs.10 lacs and odd, in para-16 of the plaint, the plaintiff-respondent has stated that the disputed bill is of about Rs.50,000/-. This is absolutely a false averment made by the plaintiff-respondent. It is unfortunate that in the courts, the litigants are taking all liberty and licence to make false statements, averments and pleadings. The reason is very obvious that the courts are very liberal and for this making of false statements, appropriate actions are not being taken against the litigants. Learned trial court has also not taken the care of all these aspects of the matter. The way and the manner in which the suit has been filed before the learned trial court creates serious doubt in the mind of the court that deliberately and purposely this value of the suit has been stated so that the suit may come within the jurisdiction of the court concerned. If it was a suit of value of Rs.500/- naturally it would have gone before the Civil Judge (J.D.). The doubt created in the mind of the court is further fortified from the fact that the interim relief has been granted by the court below in favour of the plaintiff-respondent. Prima-facie it appears to be a case where the learned court below has favoured the plaintiff-respondent for reasons best known to it. It is not the matter of inquiry here, but looking to the facts of this case, deliberately the suit of valuation of Rs.10 lacs and odd has been valued only for Rs.500/- for court fees. For pecuniary jurisdiction it was stated to be a suit for disputed bill of Rs.50,000/- and the order has been passed by the court below. Possibility of deliberate attempt to get the order from the trial court cannot be excluded. At the same time, from the facts of this case and the nature of the orders passed by the court below, the possibility of extending favour to the plaintiff-respondent by the trial court for some extraneous consideration or other reason cannot be excluded. It is suit which is of value of Rs.10,52,646-41 and accordingly the court fees could have been paid on this amount. Learned trial court has not cared to read the plaint and passed the order in favour of the plaintiff-respondent which otherwise he could not have got even where he would have approached to the appellate committee under Condition No.34. This total ignorance shown by the court below in the matter constrains this court to state that it is not a bonafide approach. The suit framed as such is not proper and it

should have been valued for Rs.10 lacs and odd and the court fees should have been paid accordingly. It is a matter now to be raised before the court below by the defendants-petitioners and on the same being raised by the defendants-petitioners, learned trial court shall consider the same in the light of the pleadings as well as the observations made in this judgment. The suit, in the facts of this case where admittedly supplementary bill has been raised, for simple declaration and injunction without praying for consequential relief of quashing and setting aside of that bill otherwise prima-facie seems to be not maintainable. However, I am not expressing any final opinion as this point has to be raised by the defendants-petitioners before the learned trial court by filing an application and if such an application is filed, the court shall consider the same in accordance with law.

Re: Maintainability of Civil Revision Application No.901 of 1999.

25. I do not find any merits in the contention of the learned counsel for the defendants-petitioners that the order passed by the court below is made under section 151 of the C.P.C.. The order is passed by the court below under Order 39 Rule 1 and 2 of C.P.C.. The application has been filed for grant of temporary injunction. The application has been grated and ultimately the order has been passed. This order passed by the learned trial court is appealable under Order 43 Rule 1 (r) of the C.P.C..

26. This revision application is not maintainable. Section 115 of C.P.C. empowers this court to call for the record of any case which has been decided by any court subordinate to it in which no appeal lie thereof. Learned counsel for the plaintiff-respondent does not dispute that against this order of the learned trial court, appeal under Order 43 Rule 1(r) of C.P.C. lies to the District court.

27. Here, I may refer to the decision on which reliance is placed by the learned counsel for the defendants-petitioners in support of his contention that where appeal lies against the order of the trial court under Order 43 Rule 1 to the District Court then revision against that order is not barred in this court.

28. I am at pain to state that the learned counsel for the defendants-petitioners before referring this decision of the Apex Court has not taken any care to read

the amended provision of section 115, C.P.C.. Section 115, C.P.C. has been amended and subsection (2) therein has been inserted by Act of 1976 w.e.f. 1-2-1976. This subsection bars the jurisdiction of this court to entertain the revision application against the order against which an appeal lie to any court subordinate to it. The decision of the Apex Court on which reliance is placed by the learned counsel for the defendants-petitioners was given with reference to unamended provisions of section 115,C.P.C.. This decision now after amendment of C.P.C. is of little help to the defendants-petitioners in this case. In view of the amended provisions of section 115, C.P.C. this revision application is clearly barred and the preliminary objection raised by the learned counsel for the plaintiff-respondent is not without any substance or merits. However, otherwise also, the plaintiff-respondent got all the relief for which he filed the suit. Appeal has also been filed by him before the appellate committee and on filing of the appeal, as what it is provided under Condition NO.34 to restore the electricity connection on payment of 30% of the amount of the supplementary bill by the consumer. This amount has admittedly been paid and nothing now substantial survives in this revision application. The purpose and object for which this suit has been filed has been gained by the plaintiff-respondent and the trial court also appears to have made it convenient for him to achieve his this object and purpose of filing the suit.

29. Though in view of these factual aspects which are undisputed, no further discussion is necessary, but as the order passed by the trial court granting temporary injunction to the plaintiff-respondent is not only wholly arbitrary but against the judgment of the Division Bench of this court, further discussion is necessary to be made for the guidance and information of the Courts subordinate.

30. The supplementary bill raised by the Board against the consumer on detection of theft or malpractice etc. it is no more res integra that the civil court has jurisdiction to entertain the suit. Against this supplementary bill, the suit lie to the civil court under section 9 of C.P.C.. Condition No.34 is not a statutory condition but it is only an contractual obligation between the supplier and the consumer of electricity and it may be binding in between these two parties but it is not binding on the court. Otherwise also, under Condition No.34, the jurisdiction of the civil court is not barred leaving apart that it is only permissible by

the statutory provision. The decision given by the appellate authority in appeal filed by the consumer under Condition No.34 is final and conclusive between the parties and not binding on the civil court. In such matters, two options are available to the consumers, either he may come directly to the civil court without availing of the alternative remedy as provided in condition No.34 or he may avail of that alternative remedy and get the decision of the appellate authority and then come before the civil court. At both the stages, the suits are maintainable. Fruitfully reference may have to the Division Bench decision of this court, Coram : B.N. Kirpal, C.J. (as he then was) and Mr. Justice A.N. Divecha in the case of Kiran Industries vs. G.E.B. This Court held that the jurisdiction of the civil court to examine the legality and validity of the bill for consumption including higher charges at the instance of the consumer without his first approaching the Appellate Committee under Condition No.34 is not either expressly or impliedly barred. The court stated that however, the consumer should be held estopped from questioning such bill for consumption including higher charges without his first approaching the Appellate Authority. In such a situation, what the Division Bench stated, the consumer's suit may be entertained by the Civil Court but no interim relief deserves to be granted to such consumer against disconnection of electric supply for non-payment of the bill under challenge in the suit. (Emphasis provided). The Division Bench further held that the civil court is precluded from granting any relief of injunction where the suitor can obtain such relief when the suitor has an alternative efficacious remedy available to him for redressal of his grievances voiced in the proceeding before it. It cannot be gainsaid that an appeal has been provided under Condition No.34 against a bill for consumption including higher charges. In para-30 of the judgment, the Division Bench has given out the conclusions which it has drawn on the basis of discussion made in the judgment and for the decision of this case, the conclusions NO.(ii) and (iv) are relevant, which are reproduced herein:

(ii) No ex-parte interim relief against disconnection of electric supply for non-payment of a bill for consumption with higher charges should be granted at the stage of institution of suit by a consumer challenging the legality and validity of such bill irrespective of the fact whether or not he has approached the Appellate Authority first before bringing his suit to the Court.

(iv) In case a suit is brought before the Court questioning the legality and validity of a bill for consumption with higher charges issued by the Board without the suitor's availing of the alternative remedy of appeal and the suitor is found disinclined to avail of the alternative remedy of appeal and insists on grant of interim relief against disconnection for nonpayment of the bill, the Court should refuse interim relief by pressing into service Sec. 41 (h) of the S.R. Act. It is clarified that in no case any interim relief against disconnection of electric supply without payment of the bill for consumption with higher charges under challenge should be granted. The consumer should be ordered to pay the bill in question in full to the Board for claiming the interim relief against disconnection for its non-payment.

31. The plaintiff-respondent has deliberately framed the pleadings and prayer in the suit in the manner and the way so as to avoid the application and binding effect of the judgment. However, artistically the pleadings may be drafted and prayers are being made but if we go by the substance and the admitted facts, it is challenge to the supplementary bill raised by the defendants-petitioners for electricity theft. This way of drafting of the pleadings and making prayer therein is certainly, at the cost of repetition to be reiterated, an attempt on the part of the plaintiff-respondent to abuse the process of the court. I am constrained to observe that the learned trial court has not taken the care in the matter and applied this binding decision. This approach of the court, as stated earlier, creates a suspicion in its fairness, impartiality and judicial approach in the matter. Otherwise also, if we go by the ultimate order passed by the trial court, it leaves no doubt in the mind of the court, that it has taken it to be a case of theft of electricity and raising of supplementary bill and as a result of which it has given direction to the plaintiff-respondent to file an appeal and further direction to deposit 30% of the amount of supplementary bill. When the right of appeal is there, I fail to see what for the court has to give the directions to the plaintiff to avail this remedy. The Court needs not to do advisory work. A consumer who approaches to Civil court directly against the supplementary bill raised for theft of electricity against it, the trial court should have raised its hands up and should not have granted interim relief. The trial court, as what the Division Bench of this court said, is precluded from granting injunction as efficacious alternative remedy is available

to a consumer. The trial court has unnecessarily consumed its valuable and precious time in writing the long judgment and ultimately giving direction to the consumer to file an appeal and directing the Board to reconnect the disconnected supply on noncompliance of the condition. This is not the job of the trial court and more so where no such relief is prayed for by the consumer. In such matter only one line order should have been there that in view of the Division Bench decision, no interim relief can be granted and the application is dismissed. Rest is the job of the consumer and in case he files an appeal then on depositing 30% of the amount, the electric connection may be restored. The civil courts should not burden themselves for this category of consumers in the suits to the extent to what they are doing everyday in such matters. The law is well settled and despite of, it is a matter of fact of which notice can be taken, everyday these type of orders are being passed by the trial courts, which result in consuming the valuable and precious time of the courts. Here, not only the court has given this direction but further indulgence has been granted which otherwise was not available to the consumer in case where he would have approached to the appellate authority by filing an appeal under Condition NO.34. This 30% of the amount of supplementary bill was ordered to be paid in three monthly installments. This is clearly a further favour which has been extended to the consumer by the learned trial court. I find sufficient merits in the contention of the learned counsel for the defendants-petitioners that the order passed by the trial court is wholly without jurisdiction but as the civil revision application itself is not maintainable, it is not necessary to be declared so and more so when this order has been complied with by the Board and appeal has already been filed by the other side before the appellate committee.

32. As a result of the aforesaid discussion, in substance, this revision application fails only on the ground that it is not maintainable and the same is dismissed. Rule discharged. Interim relief, if any, granted stands vacated.

CIVIL REVISION APPLICATION No 902 of 1999

33. Here, subsection (1) and subsection (6) of section 26 of Indian Electricity Act are relevant provisions and it may be necessary to make reference of the same, which reads as under:

(1) In the absence of an agreement to the contrary,

the amount of energy supplied to consumer or the electrical quantity contained in the supply shall be ascertained by means of a correct meter, and the licensee shall, if required by the consumer, cause the consumer to be supplied with such a meter:

Provided that the licensee may require the consumer to give him security for the price of a meter and enter into an agreement for the hire thereof, unless the consumer elects to purchase a meter.

(6) Where any difference or dispute arises as to whether any meter referred to in sub-sec. (1) is or is not correct, the matter shall be decided, upon the application of either party, by an Electrical Inspector; and where the meter has, in the opinion of such Inspector ceased to be correct, such Inspector shall estimate the amount of the energy supplied to the consumer or the electrical quantity contained in the supply, during such time, not exceeding six months, as the meter shall not, in the opinion of such Inspector, have been correct, but save as aforesaid, the register of the meter shall, in the absence of fraud, be conclusive proof of such amount of quantity :

Provided that before either a licensee or a consumer applies to the Electrical Inspector under this sub-section, he shall give to the other party not less than seven days' notice of his intention so to do.

34. In the plaint, prayer has not been made by the plaintiff-respondent for sending of the meter to the Electrical Inspector under subsection (6) of section 26 of the aforesaid Act. Only prayer has been made that the defendant have not right or power to disconnect the electricity connection of the plaintiff without serving notice. The civil court has no jurisdiction to pass an order to grant relief which is not prayed for in the main suit or on interlocutory application by interlocutory order. This is a clear case where the trial court has exceeded its jurisdiction in passing of the impugned order of sending the meter to the Electrical Inspector. This relief which has been granted by the learned trial court on application of the plaintiff-respondent is beyond the scope of the civil suit. Otherwise also, it is a right of the consumer or supplier to approach to the

Electrical Inspector in a case which is covered under section 26 of the Act. Subsection (6) of section 26 provides that in a suit where any difference or dispute arises as to whether the meter referred to subsection (1) is or is not correct, it is to be decided upon the application of either party by an Electrical Inspector. The plaintiff-respondent has not applied to the Electrical Inspector, I fail to see how it is open to him for this relief to apply to the learned trial court and it is really astonishing that the learned trial court has not cared to read the provisions as well as the decision of the Apex Court, reference of which has been made in later part of the judgment and passing this order for sending the meter to the Electrical Inspector. The way and the manner in which this order has been passed and the fact that it has been passed in total ignorance of section 26 of the Act goes to show that it is another example how this consumer appears to have been favoured by the learned trial court.

35. In the case of M.P.E.B. vs. Smt. Basantibai (supra) while dealing with the interpretation of subsection (6) of section 26, the Hon'ble Supreme Court has made following observations:

> It is evident from the provisions of this section that a dispute as to whether any meter referred to in sub-section (1) is or is not correct has to be decided by the Electrical Inspector upon application made by either of the parties. It is for the Inspector to determine whether the meter is correct or not and in case the Inspector is of the opinion that the meter is not correct he shall estimate the amount of energy supplied to the consumer or the electrical quantity contained in the supply during a period not exceeding six months and direct the consumer to pay the same. If there is an allegation of fraud committed by the consumer in tampering with the meter or manipulating the supply line or breaking the body seal of the meter resulting in not registering the amount of energy supplied to the Consumer or the electrical quantity contained in the supply, such a dispute does not fall within the purview of subsection 6 of section 26. Such a dispute regarding the commission of fraud in tampering with the meter and breaking the body seal is outside the ambit of section 26(6) of the said Act. An Electrical Inspector, has, therefore, no jurisdiction to decide such cases of fraud. It is only the dispute as to

whether the meter is/is not correct or it is inherently defective or faulty not recording correctly the electricity consumed, can be decided by the Electrical Inspector under the provisions of the said Act.

In the instant case it appears from the report of the Assistant Engineer of the State Electricity Board that one phase of the meter was not working at all, so there is undoubtedly a dispute as to whether the meter in question is a correct one or a faulty meter and this dispute has to be decided by the Electrical Inspector whose decision will be final. It is also evident from the said provision that till the decision is made no supplementary bill can be prepared by the Board estimating the energy supplied to the consumer, as the Board is not empowered to do so by the said Act. It is pertinent to refer in this connection to the observations made in the case of Gadag Betgiri, Municipal Borough, Gadag v. The Electrical lnspector. Government Electrical Inspectorate, Government of Mysore, AIR 1962 Mysore 209 as follows:-

"What the Inspector may decide under subsection 6 is whether or not the readings obtainable from the meter are accurate and whether the meter is faulty or mechanically defective, producing erroneous readings. That is the limited adjudication which in my opinion, an Inspector or other authority functioning under sub-section 6 may make under its provisions. "

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"In my opinion, the legislative intent underlying section 26(6) of the Act is similar. The only question into which the Inspector or other authority functioning under that sub-section might investigate is, whether the meter is a false meter capable of improper use or whether it registers correctly and accurately the quantity of electrical energy passing through it. If in that sense, the meter installed by respondent 2 this case was a correct meter as it undoubtedly was and as it has been admitted to be, the fact that respondent 2, even if what the petitioner states is true, so manipulated the supply lines that more energy than what was consumed by the petitioner was allowed to pass through the meter,

would not render the meter which was otherwise correct, an incorrect meter."

This decision was followed in M.P. Electricity Board, Jabalpur and another v. Chhanganlal, AIR 1981 M.P. 170 where it has been observed:-

"Where an electric meter is not registering correct consumption of energy not because there is any defect in the meter but because the wiring is defective Section 26(6) will not be attracted and the meter not being defective the question of arbitration by Electrical Inspector will not also arise . "

A contrary view was however taken in the case of Abdul Razak v. M.P. Electricity Board, [1982] M.P.L.J. 22 where it has been held that:-

"About the fittings on the meter and tampering them in such a manner that the reading of the energy would not be correct, such a dispute in view of the language of section 26(6) read with Rule 3 of Schedule VI of the Electricity Act squarely falls within the jurisdiction of the Electrical Inspector.

We are however, unable to accept this contrary view as it is obvious from the provisions of section 26 sub-section 6 of the said Act that dispute whether a meter is correct or faulty would come under the said provisions and not the dispute regarding tampering of meter. In our view, the view taken about the scope of section 26(6) in the decisions cited above are correct. In the instant case the dispute relates to whether the meter is correct one or it is faulty not recording the actual energy consumed in running the oil mill of the respondent. So this dispute squarely falls within the provisions of the said Act and as such it has been rightly found by the High Court that it is the Electrical Inspector who alone is empowered to decide the dispute. If the Electrical Inspector comes to the finding that the meter is faulty and due to some defect it has not registered the actual consumption of electrical energy, then the Inspector will estimate the amount of energy consumed and will fix the amount to be paid in respect of such energy consumed within a period not exceeding six months.

36. From the decision of the Hon'ble Supreme Court, it is clear that the dispute as to whether the meter is correct or faulty, falls under subsection (6) and not the dispute regarding tampering of the meter, finding any device tampered or suspicion about theft of electricity supply being committed by the consumer. Here, the case of the Board is that the consumer, the plaintiff-respondent has committed theft of electricity and accordingly a supplementary bill has been raised. At no point of time, earlier to the filing of the suit, and what precisely to state, earlier to raising of the supplementary bill by the Board, the plaintiff-respondent has not considered it to be a case of dispute as to whether the meter is correct or faulty. Otherwise also, I fail to see how far such an application could have been filed in the trial court. This is a right given to the consumer under a statute and that right has to be exercised before the authority concerned by filing an application for which no such application is required to be made in the trial court. The very fact that this application has been filed in the trial court and prayer made therein for sending the bills for examination thereof by the Electrical Inspector shows that it is an afterthought act to counter the case of theft of electricity as made out by the Board. In view of the provisions of subsection (6) of section 26 and the decision of the Apex Court, and in the context of facts of this case, this order made by the learned trial court is clearly without jurisdiction and it cannot be allowed to stand.

37. In the result, this revision application No.902 of 1999 succeeds and the same is allowed and the order of the Civil Judge (S.D.), Gandhidham, at Anjar dated 14-5-1999 below Application mark 4/11 dated 18-1-1999 is quashed and set aside. Rule is made absolute accordingly. The plaintiff-respondent is directed to pay Rs.2000/- as costs of this revision application to the defendant-petitioner.

38. In this case, learned trial court has passed the order of grant of temporary injunction in favour of the plaintiff-respondent in total disregard to the Division Bench decision of this court in the case of Kiran Industries vs. G.E.B. (supra). Having gone through the facts of this case, prima-facie it appears to be a case where the learned trial court has given a helping hand to the plaintiff-respondent. The order passed by the court below Ex.5 is not fair, reasonable and impartial one. It prima-facie appears to be an attempted act of favouritism

may be for consideration or without consideration which is a matter of inquiry. However, otherwise also, if a judicial officer passes an order in total disregard to the binding decision of the High Court and the Supreme Court then certainly it amounts to grave and serious misconduct for which disciplinary action may be taken against him. Reference here fruitfully may have to the decision of the Division Bench of this Court in the case of Anupam Rekadi Cabin Association vs. Jamnagar Municipal Corporation reported in 1995 (1) GLH 586. The Division Bench held as under:

> 31. After the aforesaid decision in Premji Ratansey Shah's case, there should not be an iota of doubt in the minds of the Presiding Officers when dealing with applications for injunctions filed by the plaintiffs who are trespassers and want protection against true owners. Judicial discipline requires that the law laid down by the superior courts has to be followed.
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> 32. The judicial adventurism by the plaintiffs has to be discouraged and if known principles of law are not applied by the subordinate courts and ad interim injunctions are granted for the asking, the superior courts would be failing in their duty if they do not correct such orders by taking appropriate actions. Judicial adventurism by the litigant or by the courts cannot be permitted. By deliberately ignoring or disregarding the decision or directions by the superior courts, administration of justice suffers and the rule of law is undermined. Blatant disregard of the principles of law cannot be countenanced.

39. In the case of Union of India & Ors. vs. K.K. Dhawan reported in 1993 (2) SCC 56, their Lordships of the Hon'ble Supreme Court held that when an officer in exercise of judicial or quasi-judicial powers acts negligently or recklessly or in order to confer undue favour on a person he is not acting as a Judge. There is a great reason and justice for holding in such cases that the disciplinary action could be taken. It is one of the cardinal principles of administration of justice that it must be free from bias of any kind. The Hon'ble Supreme Court in that case has given out in which cases, the disciplinary action can be taken against the officers who pass orders in exercise of judicial or quasi-judicial powers. These are as under:

(i) Where the officer had acted in a manner as would

reflect on his reputation for integrity or good faith or devotion to duty;

(ii) if there is prima-facie material to show recklessness or misconduct in the discharge of his duty;

(iii) if he has acted in a manner which is unbecoming of a Government servant;

(iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(v) if he had acted in order to unduly favour a party;

(vi) if he had been actuated by corrupt motive, however small the bribe may be.

40. Their Lordships of the Hon'ble Supreme Court further observed that the instances above are not exhaustive. A note of caution has also been given that for a mere technical violation or merely because the order is wrong and the action not falling under the above enumerated instances, disciplinary action is not warranted. Each case, what their Lordships of the Hon'ble Supreme Court said, will depend upon the facts and no absolute rule can be postulated.

41. In this case on the fact that the learned trial court has given concession to the plaintiff-respondent to pay this 30% also in three monthly installments i.e. 10% monthly thereof, goes to show that the order has been passed prima-facie to favour the plaintiff-respondent. Similarly, the order passed by the court below on application of the plaintiff-respondent Mark 4/11 dated 18-1-1999 is also an order contrary to the provisions of section 26 of the Indian Electricity Act as well as the decision of the Apex Court. Moreover, when no such relief has been prayed for nor it was considered to be a case falling under subsection (1) and subsection (6) of section 26 of the Indian Electricity Act, 1910 by the plaintiff-respondent himself how such an order could have been passed in the suit. Copy of this judgment be placed for the perusal of the Hon'ble Chief Justice for consideration and necessary action against this judicial officer.

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